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St. Luke's Med. Ctr. v. Com'rs of Gooding Appellant's Brief Dckt. 36839

IN THE SUPREME COURT OF THE STATE OF IDAHO

ST. LUKE'S MAGIC VALLEY REGIONAL MEDICAL CENTER, LTD., an Idaho nonprofit corporation (regarding Maria del Carmen Perez), Petitioner-Appellant, v. BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, Respondent.	Supreme Court Docket No. 36839-2009

APPELLANT BRIEF

Appeal from the District Court of the Fifth Judicial District
Of the State of Idaho, in and for the County of Gooding

The Honorable Barry Wood, District Judge Presiding

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I. STATEMENT OF THE CASE

On July 15, 2009, the District Court affirmed the decision of the Board of County Commissioners of Gooding County (Board), which denied medical indigence benefits to the Patient Maria del Carmen Perez (Patient). St. Luke's Magic Valley Regional Medical Center (Hospital) filed a timely appeal from the District Court's decision.

A. COURSE OF PROCEEDINGS

The Patient received necessary emergency medical services at Hospital for treatment of cholelithiasis and incurred medical expenses in excess of $15,000. *See*, Agency Record, Hospital Ex. Medical Bills. Following the Patient's hospitalization, the Hospital filed an application for county assistance with Gooding County (County). *See*, Agency Record, Hospital Ex. Uniform County Application. The County denied this application. *See*, Agency Record, County Initial Denial. The Hospital filed a timely appeal from this initial denial. *See*, Agency Record, Hospital Ex. Notice of Appeal. Following this appeal, the County again denied the application (this time following a hearing), finding that funds were available under section 1011 of the Medicare Modernization Act of 2003.[1] *See*, Agency Record, Findings of Fact,

[1] The section 1011 program is based on section 1011 of the Medicare Modernization Act of 2003. The Centers for Medicare & Medicaid Services (CMS) is the regulatory agency responsible for implementation of regulations governing the program. CMS has published a Final Rule in the Federal Register which sets forth the general operational rules governing payment under section 1011. CMS has also published a Final Policy which governs payment under section 1011 as well. Trailblazer Healthcare Enterprises, LLC was the contractor awarded the contract to administer claims under the section 1011 program. Information regarding the program is available on sites maintained by CMS and Trailblazer on the internet. Congress initially funded the program with $250 million dollars for fiscal years 2005 to 2008. At this time, it is unclear whether the program will receive additional funding to continue operation. Funds under the program were limited to assist hospitals in managing a growing population of illegal aliens accessing services through hospitals' emergency rooms. Hospitals have an unfunded mandate to treat and stabilize patients who present for treatment with an emergency medical condition under the Emergency Medical Treatment and Labor Act (EMTALA), 42USC 1395dd. This program was designed to assist hospitals with

Conclusions of Law and Decision. Following the County's second denial, the Hospital made a timely request for pre-litigation consideration of the claim. *See*, Agency Record, Hospital Ex. Request for Pre-litigation. After review by a pre-litigation screening panel, the Hospital filed a petition for judicial review. *See*, Agency Record, p. 1-4

B. STATEMENT OF FACTS

The Patient is an undocumented alien and received necessary emergency medical services at the Hospital. *See*, Agency Record, County Final Determination. The Patient meets eligibility criteria under Idaho's Medical Indigence Act, unless this Court determines that funding from section 1011 of the MMA was an available resource for the payment of her medical costs. The County maintains that funding was an available resource under section 1011 of the MMA and that the County was not obligated to pay for the Patient's medical costs until all section 1011 funding was exhausted. The Hospital maintains that a section 1011 payment was not an available resource, as the Patient meets all eligibility requirements for county assistance. The record demonstrates that the Patient is a resident of the County, the Patient received necessary emergency medical services and the Patient is without sufficient, available resources to pay for her medical costs. *See*, Agency Record, County Final Determination. The Hospital did not file a section 1011 claim.

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costs associated with emergency medical treatment in situations where undocumented aliens present for treatment to a hospital's emergency room and there is a requirement to provide emergency medical treatment under EMTALA without regard to a patient's ability to pay or resident status.

II. ISSUES ON APPEAL

Whether the Board erred in finding that the section 1011 program was an available resource under Idaho Code 31-3502(23)?

Whether the Hospital should be awarded costs and attorney fees under Idaho Code 12-117?

III. STANDARD OF REVIEW

The denial of an application for indigency benefits is reviewed under the Administrative Procedures Act. *Jefferson County v. E. Idaho Reg'l Med. Ctr. (Application of Ackerman)*, 127 Idaho 495, 903 P.2d 84 (1995); Idaho Code 31-3505G. "[J]udicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter." Idaho Code 67-5277. A reviewing court may not substitute its judgment for that of the administrative agency on questions of fact. *Jefferson, supra;* Idaho Code 67-5279(1),

> The Court will affirm the County's decision unless it finds that the decision is
>
> (a) in violation of constitutional standards or statutory provisions;
> (b) in excess of statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) not supported by substantial evidence on the record as a whole; or
> (e) arbitrary, capricious, or an abuse of discretion.

Idaho Code 67-5279(3). Notwithstanding, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced. Idaho Code 67-5279(4).

Review of the Board's decision is analogous to an agency's decision, which the Court reviews independently as if the case were directly appealed from the agency, while giving

serious consideration to the District Court's decision. *E. Idaho Reg'l Med. Ctr. v. Ada County Bd. of County Comm'rs (In the Matter of Hamlet)*, 139 Idaho 882, 884, 88 P.3d. 701, 703 (2003).

IV. ARGUMENT

A. WHETHER THE BOARD ERRED IN FINDING THAT SECTION 1011 WAS AN AVAILABLE RESOURCE UNDER I.C. 31-35102(23)?

County Assistance Is a First Resource

The County urges this Court to find that funding under section 1011 of the MMA is a resource for payment of the Patient's medical costs. The County argues that funding under section 1011 is a resource as that term is defined under I.C. 31-3502(23). I.C. 31-3502(23) provides as follows:

> "Resources" means all property, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, all forms of public assistance, crime victims compensation, worker's compensation, veterans benefits, medicaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services, excluding any interest charges, over a period of up to five (5) years. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

The County argues that section 1011 represents a "form of public assistance" and thus qualifies as a resource within the meaning of this section.

The District Court agreed with the County's interpretation of the statute and affirmed the County's decision to deny assistance. First, the District Court found that the County's

interpretation of I.C. 31-3502(23) was consistent with the language in I.C. 31-3502(15) in that the latter section expressly provides that resources shall include "resources available to [the Patient] from whatever source... ." Id. The Court reasoned that section 1011 is a form of public assistance within the meaning of section 31-3502(23) and therefore represents a resource *from whatever source* under section I.C. 31-3502(15). Additionally, the District Court found that the County's interpretation of section 31-3502(23) was not inconsistent with this Court's holding in *Braun* in that health care providers are paid directly by the 1011 program. In *Braun*, this Court held that "write offs" under the federal Hill-Burton Act were not a resource because they did not represent funds that were directly paid to health care providers. Id. at 904.

The Hospital does not take issue with the County or the District Court's interpretation of I.C. 31-3502(23). The Hospital concedes that resources include "all forms of public assistance" under I.C. 31-3502(23). The Hospital also agrees that the language in I.C. 31-3502(15) provides that resources shall include all resources available to the Patient "from whatever source." Finally, the Hospital agrees that there is an important distinction between "write offs" under the federal Hill-Burton Act, and funds that are "directly paid" to a provider under section 1011.

The disagreement by the Hospital is with the County and District Court's interpretation of the regulatory and policy language governing the section 1011 program. Regulatory and policy language governing the section 1011 program plainly demonstrates that payment may not be made to a provider under section 1011 when funding is available under a state indigent or local charity care program where payment is made on behalf of particular patients. The governing regulatory and policy language is critically important as concerns the outcome in this

dispute. The reason is that while the definition of resources under I.C. 31-3502(23) provides that resources include "all forms of public assistance", property only qualifies as a resource *if the applicant is eligible for or has an interest in the resource at issue.* Id. Moreover, under I.C. 31-3502(15), only resources "available to [the Patient] from whatever source" count for purposes of determining whether a person is medically indigent. Id.

The regulatory and policy language governing the section 1011 program plainly demonstrated that a section 1011 payment was not available to the Hospital. The Final Rule regarding implementation of the section 1011 program is set forth in the Federal Register. The Final Rule very clearly provides that section 1011 payment is available *only in those instances where no other reimbursement is likely to be received.* See, Federal Register, Vol. 70, No. 92, May 13, 2005, p. 25585. The Centers for Medicare & Medicaid Services' (CMS) Final Rule regarding the availability of payment from the section 1011 program is as follows:

> VIII. Reimbursement from Third-Party Payers and Patients
>
> Paragraph (c)(1) of section 1011 requires the Secretary to directly pay providers for the provision of eligible services to aliens to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during the fiscal year.
> Accordingly, we are adopting a position that each provider seek reimbursement from all available funding sources, including, if applicable, Federal (e.g., Department of Homeland Security), State (e.g., Medicaid or State Children's Health Insurance Program), third party-payers (e.g., private insurers or health maintenance organizations), or direct payments from a patient, prior to requesting a section 1011 payment. We believe that this is consistent with the statutory intent of this provision and will limit reimbursement to only those instances where no other reimbursement is likely to be received.
>
> *Use of Existing Practices and Procedures to Identify Reimbursement Sources*

> We are adopting a position that hospitals and other providers use their existing practices and procedures to identify and request reimbursement from all available funding sources prior to requesting section 1011 payment. See, Federal Register, Vol. 70, No. 92, May 13, 2005, p. 25585.

The Final Rule does contain some exceptions regarding the responsibility of a health care provider to identify other available funding sources prior to requesting section 1011 payment. One notable exception is with respect to the impact of payments from grants or gifts. With respect to the impact of payments from grants or gifts, the Final Rule provides as follows:

> Impact of Grants and Gifts
>
> We are adopting a position that state and local indigent or charity care programs or state funded subsidies are not to be considered in determining whether third party payment is applicable. See, Federal Register, Vol. 70, No. 92, May 13, 2005, p. 25586.

This section appears to create an exception with respect to payments from Idaho's Medical Indigence Program.

With respect to the impact of payments from grants or gifts on the submission of a claim to section 1011, however, CMS Policy is very clear. CMS has plainly stated that a section 1011 payment may not be made to a health care provider when a "patient-specific payment" is available through a state indigent or local charity care program. In particular, CMS, in interpreting its Final Policy governing section 1011 payment, has given the following direction to health care providers:

> Paragraph (c)(1) of Section 1011 requires the Secretary to directly pay providers for the provision of eligible services to aliens to the extent that the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year. To the extent that a charity care program makes payment directly to a provider for specific health care services furnished to a

> specific patient, paragraph (c)(1) applies and the statute does not permit payment under section 1011. If a partial patient-specific payment is received from a charity care program, the Section 1011 reimbursement will be reduced by the amount of the patient-specific payment.
>
> With respect to general donations to a provider that are not made on behalf of a specific patient, however, as stated in the Section 1011 Final Policy Notice (page 35), generally, "we are adopting a position that State and local indigent or charity care programs or State-funded subsidies are not to be considered in determining whether a third-party payment is applicable." Therefore, a provider may receive full Section 1011 reimbursement for eligible services even in cases in which the provider separately receives payments under a general charity care program, as long as the charity care program does not direct the funds to payment for services given to a particular individual. See, page 11, question D4, Questions and Answers publication from CMS and Final Policy Notice, Bates No. 0028 and 0124.

Accordingly, the regulatory and policy language governing the section 1011 program plainly did not permit a payment to the Hospital for the services provided to the Patient. Payments under Idaho's Medical Indigence Program are clearly made on behalf of particular patients and thus represent the kind of "patient-specific" payment that qualifies as a resource under the section 1011 program. Additionally, it is clear that the governing rules did not permit the Hospital to request payment. Payments under state indigent programs, where payment is made on behalf of a particular individual, must expressly be exhausted before a *request* for payment may be submitted to the section 1011 program. The County and District Court's decision that section 1011 payment was a resource is therefore clearly affected by error of law and must be REVERSED.

B. WHETHER THE HOSPITAL IS ENTITLED TO COSTS AND ATTORNEY FEES?

The Hospital Should be Awarded Costs and Attorney Fees

The Hospital maintains that the County acted without a reasonable basis in law or fact in denying the Patient's application. Regulatory and policy language governing the section 1011 program clearly provided that payment could not be made to the Hospital. Despite clear direction from CMS that a section 1011 payment could not be made to the Hospital, the County and the District Court persisted in denying payment to the Hospital under the county assistance program. It has now been almost a year and a half since a resident of the County received necessary emergency services at the Hospital. Since that time, no payment has been made to the Hospital for the Patient's services by the County, and the Hospital continues to incur significant costs pursuing an appeal where regulation and law seem clear. Request is hereby made for an award of costs and attorney fees pursuant to Idaho Code 12-117.

V. CONCLUSION

Based on the foregoing points and authorities, the Hospital hereby requests that the Board's decision be REVERSED.

DATED this 21st day of December 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December 2009, I served two true and correct copies of the above Appellant Brief by U.S. Mail, postage pre-paid, on the following person(s):

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